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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Policies and Rules
Concerning Toll Fraud

)
) CC Docket No. 93-292
)
)

NYNEX COMMENTS

NYNEX Corporation

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Dated: January 14, 1994

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SUMMARY

NYNEX applauds the Commission's desire to assist the telecommunications industry in its battle against toll fraud. Toll fraud is a major problem that affects every segment of the telecommunications industry. To help minimize the financial losses suffered by the industry and consumers due to fraud, NYNEX has spent millions of dollars and expended countless hours to deploy fraud prevention capabilities in their networks and systems.

NYNEX believes that PBX owners should be primarily responsible for PBX toll fraud. The PBX owner is in the best position to prevent fraud by programming, configuring or disabling the remote access features in the PBX, or by installing adequate security or monitoring procedures.

The Commission should not adopt the Florida Public Service Commission rule. That rule insulates payphone providers from liability if they merely subscribe to LEC Billed Number Screening and Originating Line Screening services. There are other steps that payphone providers can and should take to mitigate fraud.

In order to help combat cellular fraud, the Commission should adopt its proposed rule (Section 22.929) with several modifications. The Commission should also seek legislation that would more clearly place enforcement of its fraud rules within the jurisdiction of the Secret Service.

To help prevent fraud on calling card, collect and bill to third party calls, the Commission should require interexchange carriers to provide LECs with both the calling number and the called number when querying the LIDB database.

NYNEX opposes the Commission's proposal to expand LEC liability for PBX fraud, payphone fraud, cellular fraud and calling card fraud. The imposition of additional liability will not prevent fraud from occurring. It will only result in increased disputes before the Commission and the Courts, and the potential for increased rates for all ratepayers. Changing the current liability rules is not in the public interest.

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NYNEX Corporation ("NYNEX"), on behalf of New York Telephone Company, New England Telephone and Telegraph Company and NYNEX Mobile Communications Company, hereby comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter.

I. INTRODUCTION

In the NPRM, the Commission seeks comment on various proposals that it believes will help avoid or reduce the risks of toll fraud. Specifically, the Commission seeks comment on its proposals to:

- (1) achieve closer coordination between the industry, consumers, vendors, law enforcement agencies, Congress and the Commission to aid in the detection and prevention of toll fraud;
- (2) improve consumer education initiatives by the Commission, consumer groups, and the telecommunications industry;
- (3) determine that tariff liability provisions that fail to recognize an obligation by the carrier to warn customers of toll fraud risks of using carrier services are unreasonable;

- (4) establish a federal policy assigning liability for payphone fraud;
- (5) codify a requirement for written warnings for all telecommunications equipment registered under Part 68; and
- (6) determine measures to prevent cellular and line information database (LIDB) fraud.

NYNEX applauds the Commission's desire to assist the telecommunications industry in its battle against toll fraud. In these Comments, NYNEX will describe what it is doing to help combat toll fraud. We will also discuss steps that the Commission can take to help reduce toll fraud. However, NYNEX does not support the Commission's proposal to expand liability for toll fraud beyond the limits specified in NYNEX's tariffs. Expanding the liability of local exchange carriers (LECs) for toll fraud is unlikely to prevent fraud from occurring. In addition, it would be reasonable to expect that costs that the LECs would incur would ultimately be passed along to customers in the form of higher rates. Instead of attempting to develop rules for deciding who is liable for what kind of fraud under which circumstances, the Commission should devote its resources to working with the industry to develop solutions to prevent toll fraud.

II. NYNEX IS DEVOTING CONSIDERABLE RESOURCES TO COMBAT TOLL FRAUD

There is no dispute that toll fraud is a major problem that affects every segment of the telecommunications industry. To help minimize the financial losses suffered by the industry and consumers due to fraud, NYNEX has spent millions of dollars

and expended countless hours to deploy fraud prevention capabilities in their networks and systems.

A. Preventing Telephone Toll Fraud

In order to help control PBX, payphone and calling card fraud, NYNEX has taken numerous measures, including, but not limited to, the following:

1. Blocking Direct Dialed International Calls

NYNEX initiated a program to combat international toll fraud from its public telephones at the Port Authority bus terminal in New York. Working with local police and community service boards, NYNEX identified public phones where fraud was occurring and modified those phones to block direct dialed international calls.

2. Line Information Database (LIDB)

LIDB is the database system that NYNEX, other LECs and interexchange carriers (ICs) use to validate calls made with NYNEX calling cards. NYNEX's LIDB automatically deactivates calling cards when usage exceeds certain thresholds.

3. Fraud Investigation Centers

NYNEX's Database Administration Centers investigate reports of collect, bill to third party and calling card fraud on a seven day per week, 24 hour basis.

4. Advanced Toll Notifier (ATN)

NYNEX monitors direct dialed international call usage to detect fraud. If it appears that fraud is occurring, NYNEX will notify the customer and terminate service immediately where appropriate.

5. Voice Recognition

NYNEX is testing the feasibility of deploying voice recognition capabilities in its network. One potential application is voice verification of calling card calls.

6. Customer Education

NYNEX's Security Departments have initiated educational campaigns for business customers with CPE. In addition, the NYNEX Fraud Control Committee has prepared videos on fraud for internal use and training. NYNEX has been using bill inserts to warn its customers about toll fraud schemes. NYNEX has also worked with law enforcement agencies, the local press and community outreach programs to educate the general public about toll fraud. For example, in Maine, NYNEX has established an electronic bulletin board to share information regarding methods for fighting toll fraud.

7. Subscriber Activated Call Blocking

NYNEX is conducting a trial of a central office-based feature, known as Subscriber Activated Call Blocking, which permits end users to utilize a Personal

Identification Number (PIN) on calls. Any calls made without the PIN will be blocked. This feature will help to reduce toll fraud caused by clip-on devices.

8. Originating Line Screening

NYNEX offers Originating Line Screening (OLS) service to payphone providers and other call aggregators. This service is used by private payphone providers and call aggregators who wish to deny sent-paid calling.

9. Billed Number Screening

NYNEX offers Billed Number Screening (BNS) to customers who wish to prevent collect or bill-to-third number calls from being charged to their phones. BNS data is made available to NYNEX's LIDB customers.

10. Call Blocking Services

NYNEX offers several call blocking services. One service, International Direct Dial Blocking (IDDB), blocks direct-dialed international calls from the customer's phones. The service is available to NYNEX's Intellipath (Centrex) customers and to business customers with PBXs, as well as to payphone providers and call aggregators. Another service, Limited InterLATA Dialing, blocks both domestic and international direct-dialed long-distance calls from private payphones. NYNEX also offers services which block calls to pay-per-call services, such as 900, 700, 970, 540 and 550 services.

11. Participation In Industry Groups

NYNEX is currently serving as the co-chair of the Toll Fraud Prevention Committee of the Alliance for Telecommunications Industry Solutions (formerly the Exchange Carriers Standards Association). This committee is comprised of members from local exchange and interexchange carriers, private payphone owners, equipment manufacturers, the Secret Service and others, and serves as a valuable forum for exchanging ideas on how to prevent and detect toll fraud.

B. Preventing Cellular Fraud

In order to help control cellular fraud, NYNEX has taken numerous measures, including, but not limited to, the following:

1. Prevention of Cloning Fraud

In order to detect and reduce cloning fraud,¹ NYNEX uses mechanisms such as high usage and glare reports (notification from the Mobile Switching Center that two phones are on the air at the same time using the same number). These detection methods allow NYNEX to review the customer's records to determine whether cloning fraud is occurring and then take the necessary steps to stop it. NYNEX is also in the process of

¹ Counterfeiting or cloning fraud occurs when an unauthorized user programs a valid subscriber Mobile Identification Number (MIN)/Electronic Serial Number (ESN) into a phone. The unauthorized user then uses the cloned phone until detected.

testing systems that will allow it to develop customer calling profiles on an "on-line" basis. In this way, NYNEX will be able to detect potential cloning fraud even more quickly, resulting in greater fraud reductions in the future. NYNEX is also trialing the use of Personal Identification Numbers (PINs) to validate customer calls.

2. Prevention of Tumbling Fraud

To prevent tumbling fraud,² NYNEX has implemented a pre-call validation system that enables it to verify a mobile call prior to the call being completed. With this type of validation system, rotating an ESN/Telephone Number combination on each call becomes ineffective for the fraudulent users.

3. Participation in Industry Groups

The cellular industry as a whole has been very active in fighting fraud. NYNEX is a member of the Steering Committee of the CTIA (Cellular Telephone Industry Association) Fraud Task Force which was formed to foster the development of fraud control mechanisms and to disseminate such information. Measures taken by this task force include investigation, development of

² Tumbling fraud occurs when an unauthorized user either randomly or sequentially changes the ESN or MIN after every call, thereby confusing a cellular system long enough to complete a call.

technology to control fraud, and training for law enforcement officers. In the area of investigation, the Task Force attempts to determine the latest distribution channels for cloned phones and algorithms used for tumbling ESNs. The Task Force also tracks the latest technologies being used to commit fraud. In the area of technology development, the Task Force funds a lab that analyzes the cloned phones.

4. Limiting Service Features

Another measure that NYNEX has taken to reduce cellular fraud is limiting access to certain cellular service features and direct dialed international calling. NYNEX has found that some of the features that are currently available to cellular customers exacerbate the fraud problem. In particular, features such as three way calling and call forwarding allow fraudulent users to "daisy-chain" calls through the cellular network to a PBX or 800 number. This allows the fraudulent users to steal services from multiple carriers and customers. By limiting the availability and use of these features, NYNEX has been able to reduce fraud.

* * *

NYNEX has played and will continue to play an active role in fighting toll fraud. However, each segment of the industry -- LECs, interexchange carriers, cellular carriers, end users, operator service providers, COCOT vendors, equipment

manufacturers, etc. -- must also take action in their respective areas of responsibility.

III. LEC LIABILITY FOR TOLL FRAUD SHOULD NOT BE EXPANDED

NYNEX opposes the Commission's proposal to expand LEC liability for PBX fraud, payphone fraud, cellular fraud and calling card fraud. Expansion of liability for toll fraud is not in the public interest. The imposition of additional liability will not prevent fraud from occurring. It will only result in increased disputes before the Commission and the Courts, and the potential for increased rates for all ratepayers.

There is absolutely no basis for the Commission's suggestion that abrogation of or change in the limitation of liability provision is necessary in order to incent LECs to control toll fraud. Interexchange carriers are not the only entities that suffer from fraud. Fraud results in lost revenue and higher costs for NYNEX and other LECs as well. As set forth in Section II, supra, NYNEX has already spent millions of dollars and countless hours to combat and investigate toll fraud,³ and to dispatch employees to deal with service problems caused by fraud. NYNEX can be expected to continue its commitment to fraud prevention and control without the risk of additional liability proposed by the Commission.

³ For example, in order to combat LIDB fraud alone, NYNEX has incurred \$5 million in capital expenditures and has devoted 37 full-time employees at a cost of \$2.3 million per year.

Clearly, if the Commission imposes broader liability on the LECs, the LECs should be afforded an opportunity to adjust their rates accordingly. If LECs are going to become insurers of toll fraud losses and remain financially viable, it would seem reasonable to expect that the rates for their services would have to be increased to reflect the added costs and risks of assuming liability for toll fraud. The additional costs and risks could make the toll fraud prevention services, such as LIDB, Billed Number Screening or Originating Line Screening, cost prohibitive, with the net result that toll fraud losses would increase. Imposing broader liability on the LECs is simply not in the public interest.

A. The Current Liability Rules Reflect Sound Public Policy

The Commission proposes to allocate responsibility for toll fraud among the parties involved (e.g., the customer, the interexchange carrier, the LEC, the equipment vendor, the COCOT owner, etc.) using a fault-based standard. Such a proposal represents a major change in the way liability for service problems is assigned under the LECs' current tariffs. Today, a LEC is generally not liable to its customers for damages if toll fraud prevention service fails. Such liability exists only in extreme cases -- where the LEC has been grossly negligent or has engaged in willful misconduct.⁴ By limiting

⁴ See Section 2.1.3(A) of NYNEX's Tariff FCC No. 1 which provides: "The Telephone Company's liability, if any, for its willful misconduct shall not be limited by this tariff. With respect to any other claim or suit, by a

its liability, NYNEX protects itself and ultimately its customers from incidental and consequential damages, such as lost profits, which can be significant.

The current liability principles are an inherent part of the overall ratemaking function and have permitted NYNEX and other LECs to develop reasonable rates for services that do not have to take into account potential damages for simple mistakes or even for service failures completely beyond their control. Such protection is particularly important in the telephone industry which is characterized by a high degree of complexity in the provisioning of service. The limitation of liability provisions have also reduced disputes and litigation between carriers and their customers, thereby enabling LECs to avoid costs that would otherwise likely be passed on to customers in the form of higher rates.

The Commission has long recognized the reasonableness and enforceability of limitation of liability provisions in common carrier tariffs:

"[I]t is well settled that communications common carriers may reasonably limit their liability. We are similarly mindful that, except in the case of willful misconduct, all telephone ratepayers would bear the

4 (Footnote Continued From Previous Page)

customer or by any others, for damages associated with the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of (B) through (H) following, the Telephone Company's liability, if any, shall not exceed an amount equal to the proportionate charge for the service for the period during which the service was affected. This liability for damages shall be in addition to any amounts that may otherwise be due the customer under this tariff as a Credit Allowance for a Service Interruption."

increased cost of litigation and settlement expenses ... were we to expand substantially telephone company liability. In other words, all ratepayers to some extent 'insure' against the liability which the telephone company must incur for nonintentional torts or service failures suffered by a relatively small number of users."⁵

The Commission found that limitation of liability provisions strike a reasonable balance between the rights of aggrieved customers and the public interest in the provision of universal telephone service at the lowest possible cost.

The reasonableness of limitation of liability provisions has also been upheld in numerous court proceedings throughout the United States. Courts across the country have approved tariff provisions limiting the liability of providers of telephone services, concluding that sound public policy reasons warrant such approval.

The United States Supreme Court affirmed the validity of limitation of liability clauses for public utilities in Western Union Tel. Co. v. Esteve Bros. & Co., 256 U.S. 566 (1921). At issue in that case was a tariff by a telegraph company limiting liability for mistakes in relation to the charge for the service. The Supreme Court upheld the principle that public policy warranted inclusion of limitation of liability provisions in tariffs, stating that "[t]he limitation of liability was an inherent part of that rate. The company

⁵ See In the Matter of American Telephone and Telegraph Company, 76 FCC 2d 195, 198 (1980). Accord, Halpert and Company, Inc. v. New York Telephone Company, et al., 6 FCC Rcd 2548, 2549 (1991).

could no more depart from it than it could depart from the amount charged for the service rendered."⁶

One theory underlying some decisions upholding liability limitation provisions is that, in consideration of the strict regulation of a public utility's operation and curtailment of its rights and privileges, regulation of its liabilities is necessary to strike an equitable balance of benefits and burdens.⁷ In other words, a limitation of liabilities rule is a correlative of reasonable limitation of a telephone company's earnings.⁸

The Courts have recognized that a relationship exists between limiting the liability of public utilities and serving the public interest with low rates.⁹ For example, in affirming the liability limitation provisions of NYNEX's Massachusetts state tariff,¹⁰ the Massachusetts Appeals Court noted that "there are sound public policy reasons for shielding the telephone company from certain damage claims. Such limitation of liability enables the telephone company to set

⁶ Western Union Tel. Co. v. Esteve Bros. & Co., 256 U.S. at 571.

⁷ Garrison v. Pacific Northwest Bell, 45 Or.App. 523, 608 P. 2d 1206 (1980).

⁸ Colich v. Pacific Bell, 244 Cal. Rptr. 714, 198 Cal. App. 3d 1225 (2nd Dist. 1988); Cole v. Pacific Tel. & Tel. Co., 112 Cal. App. 2d 416, 246 P.2d 686, 688 (1952).

⁹ Computer Tool & Engineering, Inc. v. Northern States Power Co., 453 N.W.2d 569, 573 (Minn. App. 1990).

¹⁰ The liability limitation contained in the Massachusetts state tariff is substantially similar to the limitation contained in NYNEX's Tariff FCC No. 1.

its rate at a reasonable level."¹¹ In other words, a limitation of liability provision is an essential and valid part of the rates charged for a public utility's service.¹²

Yet another ground upon which courts have justified the limitations rule is the technological complexity of modern telephone systems and the many ways in which service failures occur without human fault.¹³ Similarly, the fact that subscribers control a number of factors essential to placing and completing a call has been relied on in upholding the limitations rule.¹⁴

The substance of the limitation of liability provision contained in NYNEX's tariff is also common in commercial transactions. Commercial contracts often disclaim warranties and limit liability to the repair or replacement of the equipment or service, or to a refund of the purchase price. All other liability for incidental and consequential damages is normally excluded. In the absence of regulation, NYNEX would be able to contract directly with customers to protect itself against unlimited liability in a manner similar to that provided in the tariffs.

11 Lebowitz Jewelers Ltd., Inc. v. New England Tel. & Tel. Co., 24 Mass. App. Ct. 268, 273, further appellate review denied, 400 Mass. 1104 (1987).

12 Landrum v. Florida Power & Light Co., 505 So. 2d 554 (Fla.App. D3), review denied, 513 So.2d 1061 (Fla. 1987); Abraham v. New York Tel. Co., 85 Misc. 2d 677, 380 N.Y.S. 2d 969 (1976).

13 Hoffman v. Southwestern Bell Tel. Co., 358 F.Supp. 727 (D.C. Kan. 1973).

14 J. Meyer & Co. v. Illinois Bell Tel. Co., 88 Ill. App. 3d 53, 409 N.E.2d 577, 561 (2nd Dist. 1980).

The degree of harm which NYNEX and its ratepayers would suffer, in abrogating or changing the current limitation of liability provision, cannot of course be predicted in precise terms. There is no way to predict the increased number of claims that would be asserted or law suits filed; the administrative costs of investigating and processing relevant claims; the costs of preparing and trying cases; the amount of other legal and administrative expenses incurred in representation; and the amount of damage awards that would be made by juries or, alternatively, settlements made out of court. What is predictable, however, is that abrogation or change of the existing liability principles would have substantial adverse consequences on the level of costs incurred by NYNEX and other providers of telecommunications services and potentially on the rates paid by NYNEX's customers. In short, changing the liability rules is not in the public interest.

B. Expansion of Liability Would Be Inequitable and Impractical

The Commission's proposal to broaden LEC liability for service failures is not only inconsistent with long-standing precedent and commercial practice, it is also not equitable or practical. The LECs simply cannot completely prevent toll fraud from occurring even with the exercise of greater than ordinary care. For example, unauthorized use of a stolen calling card often cannot be discovered unless there is excessive usage or the customer complains. It would be unfair to impose financial responsibility on LECs for losses occasioned through this type of fraud.

Use of a fault-based standard also will generate numerous factual disputes as to whether the toll fraud in question was caused by LEC negligence or by some other party. There would certainly be an increase in the number of complaints before the Commission as customers, local exchange carriers, interexchange carriers, and equipment vendors fight over which party is responsible for the toll fraud.

Given the increasingly intricate nature of telephony, it is not surprising that the cause of a toll fraud is often difficult, if not impossible, to determine. Determining the cause of toll fraud is extremely difficult as among calling party, called party, local exchange carrier, interexchange carrier and equipment vendors, all providing services or equipment necessarily involved in the origination, transport and termination of a given call. Accordingly, the nature and complexity of telephone service preclude the formulation of discrete, identifiable rules for assigning liability.¹⁵

In short, the currently effective limitation of liability provisions in NYNEX's tariffs reflect sound public policy and are in the public interest. There has been no change in conditions in the telephone industry that would warrant change in the limitations rule. By contrast, reasons which have supported the rule for decades are applicable with

¹⁵ In addition to significant difficulties in attributing the cause of and responsibility for toll fraud, a further significant drawback to expanding liability is the issue of determining damages. Determining amounts of alleged out-of-pocket loss due to toll fraud is extremely difficult.

even greater force in today's constantly evolving and more complex telecommunications environment.

IV. THERE ARE STEPS THAT THE COMMISSION CAN TAKE TO
HELP REDUCE TOLL FRAUD

While NYNEX does not support the Commission's proposal to expand the liability of LECs for toll fraud, there are steps that the Commission can take to help reduce toll fraud. However, NYNEX does not believe that establishment of a Federal Advisory Committee to oversee the development of solutions to toll fraud is necessary at this time. Through the Toll Fraud Prevention Committee in which the Commission already participates, the industry is currently making great strides toward the reduction of toll fraud. The Commission can best assist in these efforts through the regulatory and legislative actions discussed below.

A. PBX Fraud

NYNEX believes that PBX owners should be primarily responsible for PBX toll fraud. Indeed, that position was adopted by the Commission in its Chartways decision.¹⁶ The PBX owner is in the best position to prevent fraud by programming, configuring or disabling the remote access features in the PBX, or by installing adequate security or monitoring procedures. The Toll Fraud Prevention Committee has

¹⁶ Chartways Technologies, Inc. v. AT&T Communications, 6 FCC Rcd 2942 (1991), application for review denied, FCC 93-394 (August 19, 1993).

also adopted the position that the PBX owner has the primary responsibility for prevention of PBX fraud.¹⁷

In June 1992, NYNEX testified before Congress regarding its ability to prevent PBX toll fraud in the NYNEX region.¹⁸ As a local exchange carrier, NYNEX's role is limited to the portion of the communications activities that occur on its facilities outside of the PBX.¹⁹ NYNEX usually provides the last link in the public switched network for incoming calls destined for a PBX and the corresponding first segment of the route for outgoing calls.

NYNEX does not believe that requiring LECs to offer network monitoring services will be effective at preventing PBX toll fraud. In delivering and receiving calls from PBXs, NYNEX is not able to distinguish legitimate from fraudulent usage. Only the long-distance carrier or the PBX owner has the information necessary to conduct a timely detailed analysis of length of call, countries called, number of attempts per hour, etc. to determine possible fraudulent usage.

NYNEX supports the Commission's proposal to educate consumers better about toll fraud risks. While NYNEX is willing to amend its tariffs to warn customers of the risks of toll fraud, the inclusion of such a warning in its tariffs may

17 See Attachment A hereto.

18 See Attachment B hereto.

19 NYNEX does not sell PBX equipment to business customers, but does provide central office based PBX-like service (e.g., Intellipath Service). NYNEX attempts to make such services as secure from toll fraud as possible.

not be totally effective since many customers are not familiar with or do not have access to the tariffs. Another way of warning consumers about the risks of toll fraud may be to include such warnings in periodic bill inserts. As noted above, NYNEX has already been using bill inserts to warn its customers about toll fraud.

NYNEX also supports the Commission's proposal to amend Part 68 of the Commission's rules to require PBX manufacturers to provide warnings regarding the potential risk of toll fraud associated with use of their equipment. Such warnings should be prominent and conspicuous and be included in any instruction manual or other literature accompanying the equipment. In addition, as recommended by the Toll Fraud Prevention Committee, the Commission should require equipment manufacturers to ship only those PBX features that the customer orders. The manufacturer should be required to remove default passwords from features such as Direct Inward System Access (DISA) so that hackers cannot easily access them.

B. Payphone Fraud

The Commission seeks comment on whether it should adopt the Florida Public Service Commission (PSC) rule which holds payphone providers responsible for fraudulent operator-assisted and collect calls if they fail to subscribe to LEC-provided OLS and BNS services. If the payphone subscriber does subscribe to these services, then the responsibility for such calls lies with the LEC (if it is determined that the LEC failed to provide the requested

services) or with the interexchange carrier (if it is determined that the carrier failed to properly validate calls in the LEC database).

The Florida PSC rule has several infirmities. First, NYNEX does not agree that payphone providers should be insulated from liability for fraudulent operator-assisted and collect calls merely because they subscribe to BNS and OLS services. Such a rule is inconsistent with the Commission's United Artists decision.²⁰ There are other steps that payphone providers can and should take to mitigate such fraud. These include exercising reasonable care in the selection of payphone locations, adequately testing the efficacy of payphone fraud control features, adequately monitoring use of the payphones, protecting the physical integrity of the payphones and the inside wire which serves them, and removing or relocating those payphones which are experiencing a high incidence of fraud or vandalism. In addition, payphone providers can program their phones or use LEC blocking services to block incoming calls.²¹ All of these measures are

²⁰ United Artists Payphone Corp. v. New York Telephone Co. and American Telephone and Telegraph Co., FCC 93-387 (August 18, 1993). In this proceeding, the Commission found that United Artists was not liable for fraudulent calls since it had taken other steps to prevent fraud in addition to ordering OLS and BNS service.

²¹ Nearly all fraudulent international incoming collect calls to a payphone are completed because of the failure of overseas operators to check the LIDB database or to verify with an IC's domestic operator that BNS restrictions are in place. This is entirely outside the control of the LECs. In fact, there is no incentive for foreign telephone companies to validate calls because they will

entirely within the control of the payphone provider.²²

NYNEX also does not agree that the LECs should compensate ICs for the fraudulent toll calls caused by the failure of LEC OLS and BNS services. This would unfairly allow the ICs to profit from the fraud. At best, the ICs should be reimbursed for the access charges that they paid to the LEC for originating and/or terminating the call.

The Florida PSC rule also fails to address the problem of fraudulent outbound direct-dialed calls. Again, payphone providers can prevent such calls by programming their phones to block the calls or by utilizing LEC call blocking services. NYNEX offers several call blocking services that block international and domestic direct-dialed calls. However, only 75% of the private payphone providers in the NYNEX region subscribe to these services. Moreover, if the payphone provider orders OLS, NYNEX will pass an ANI 07 code to the interexchange carrier on direct-dialed calls. This may enable the interexchange carrier to take action to prevent the call from being completed. Such action is entirely outside the control of the LECs.

21 (Footnote Continued From Previous Page)

receive significant settlements for such calls from the domestic long-distance carriers whether or not the calls are collected. The Commission should require that ICs no longer pay settlements for such calls to foreign telephone companies that do not take steps to control fraud through use of LIDB.

22 AT&T indicates that it is able to control fraud at its payphones through use of LEC screening services and implementation of payphone equipment security measures.